

BOARD OF APPEALS CASE NO. 5503

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BEFORE THE

APPLICANT: Old Emmorton Commons, LLC

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ZONING HEARING EXAMINER

REQUEST: Special Exception to permit a medical
clinic in the RO District

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OF HARFORD COUNTY

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HEARING DATE: October 10, 2005

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Old Emmorton Commons, LLC, is seeking a Special Exception, pursuant to Section 267-53H(9) of the Harford County Code to allow a medical clinic in the RO District.

The subject property is located at 2225-2227 Old Emmorton Road, in the First Election District, and is more particularly identified on Tax Map 56, Grid 3D, Parcel 82, Lot 1. The parcel contains approximately 4.61 acres.

Mr. James Martin appeared and testified that he is the Vice President and general counsel of James Ward Development Group. The Applicant LLC is owned by members of the Ward family. Mr. Martin is the official spokesperson for the Applicant. The witness verified that the site plan (Staff Report Attachment 4) shows that the property as a 5 acre rectangular parcel. The property is accessed from Old Emmorton Road. There are commercial uses to the west of the subject property, and a residential townhouse development to the north.

The site plan depicts two office buildings; building number one, identified as 2225 Old Emmorton Road; and building number two, identified as 2227 Old Emmorton Road. Building Number One has already been completed, and is 100% occupied. Building Number Two is currently under construction. Building Number One may be converted to office condominium units at some point in the future. Units in building number two will be offered for sale as office condominiums upon completion. The building will be utilized as a medical clinic, and will be occupied by Small Doors Family Practice Group and Associates, and several part time medical practitioners.

Mr. Martin indicated that the Applicant is requesting blanket approval for both buildings to be used for medical clinics. The Applicant has been approached by several medical groups who have expressed interest in both buildings. Available parking exceeds Code specifications, which require only 200 parking spaces. The property currently contains 263 parking spaces, located across the front, and down both sides of the building. In Mr. Martin's opinion, the proposed medical clinic would have no adverse impact on either surrounding properties, or the neighborhood. Finally, he testified that the Applicant had reviewed the Staff Report, and agreed with all conditions set forth therein.

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Mr. Bill Koenig, a resident of the adjoining townhouse development, cross-examined the witness regarding anticipated hours of operation for the proposed family medical practice. Mr. Martin responded that he believed the clinic would operate between the hours of 9:00 a.m. and 5:00 p.m. For clarification purposes, the Applicant called Dr. Craig Dohmeier, one of the physicians from Small Doors Family Practice Group. Dr. Dohmeier testified that the clinic's anticipated hours of operation were Monday through Thursday from 7:30 a.m. to 8:00 p.m.; Friday from 7:30 a.m. to 4:40 p.m.; and two Saturdays a month from 8:30 a.m. to 12:00 p.m..

Mr. Dennis Sigler, Coordinator, Zoning and Board of Appeals Review, appeared and testified for the Department of Planning and Zoning, regarding the findings of fact, and recommendations made by that agency. He stated that the Department had reviewed the Application and Attachments, and visited the site and surrounding area. The Department also prepared photographs and submitted an aerial photograph in connection with the Staff Report.

In reviewing the Application, the Department determined that both the existing Building Number One, and Building Number Two, which is currently under construction, have proper permits. The only reason the Application was required, is that medical clinics are allowed in the RO District only as special exception uses. He stated that the area surrounding the subject property to the north along Laurel Bush Road and MD Route 924 contains medical offices. The Festival Shopping Center is located across Route 924 from the subject parcel. The witness opined that the proposed medical clinic building is compatible with the surrounding neighborhood.

Mr. Sigler verified that the existing building number one was approved by the Department of Planning and Zoning in July of 1999. Sufficient on-site parking is available for both requested uses. According to the witness the Department proposed only two conditions in its September 26, 2005 Staff Report -- first, that the Applicant obtain all necessary permits, and second, that the landscaping shown on Staff Report Attachment Number 12 be installed after construction of the second building is completed.

Mr. Sigler also testified that the Department had considered all provisions set forth in Section 267- 9I in connection with this request, and determined that the proposed special exception meets all criteria set forth therein. Based on the results of the Department's investigation, the proposed use, at the proposed location, would result in no adverse impact to adjacent properties. In addition, it would have less impact on neighboring properties, at the subject location than if located elsewhere within the RO District due to compatible uses in the surrounding area. With regard to Section 267-9I (2), Mr. Sigler indicated that the traffic anticipated to be generated by the proposed use was evaluated during the preliminary approval process.

No witnesses appeared in opposition to the subject Application.

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CONCLUSION

The relevant Provisions of the Harford County Code with regard to special exception uses are set forth below.

Section 267-51 provides:

“Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Section 267-52 provides:

“General Regulations

- A. Special exceptions require the approval of the Board in accordance with Section 267-9(I), Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant of approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”

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Section 267-53H(9) of the Harford County Code provides:

Health services and medical clinics.

(b) These uses may be granted in the RO District provided that:

- [1] The structure shall be of size, scale and facade compatible with the surrounding residential neighborhood.
- [2] All parking shall be accommodated on the site in a manner compatible with the surrounding roads and uses, and a landscaped buffer yard ten feet wide shall be provided between the parking area and any adjacent residential lot.

Section 267-9I provides as follows:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise on the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

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- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.”

The Court of Appeals established the standard for determining whether to grant a special exception in the case of Schultz v. Pritts, stating that

“...[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. (*Emphasis in original*) 291 Md. 1, 11, 432 A.2d 1319 (1981).

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The Schultz court further held that “the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327; citing, Anderson v. Sawyer, 23 Md. App. at 624-25, 329 A. 2d at 724 (1974) and Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31, 214 A.2d 146 (1965).

The Hearing Examiner finds that the Applicants have met their burden of proving that the requested uses meet the standards and requirements prescribed by Section 267-53H (9) of the Harford County Code. The subject parcel is zoned RO. Many neighboring parcels are also zoned RO. The proposed use of the property as a medical clinic is compatible with other uses in the neighborhood. The parcel received preliminary site plan approval in 1999 for the construction of two matching office buildings. The first building is already complete, and is 100% occupied. The second building, which is presently under construction, will match the first building in size, shape and facade. Parking for the site is laid out symmetrically across the front, and down the sides of each of the two buildings. All parking is accommodated on site, and the property actually provides more than the required number of parking spaces. The landscaping detail plan approved during the preliminary site plan approval process, provides for a minimum ten foot wide buffer yard between the parking area and adjacent residential lots. Most of the landscaping has already been installed. The remainder will be installed once building number two is completed.

The Hearing Examiner adopts the findings of the Department of Planning and Zoning, that the proposed use meets all criteria set forth in Section 267-9I of the Harford County Code. Health services and medical clinics are permitted special exception uses in the RO District, and are presumed compatible if all criteria set forth in the Code are met. The property is located within the Development Envelope. Many of the surrounding parcels are also zoned RO. The proposed use is compatible with other commercial uses in the neighborhood. No testimony was introduced to indicate that the proposed use will create any noise, dust, gas, smoke or fumes, or have any adverse impact on county facilities, other structures in the vicinity, natural features, or cultural or historical landmarks. The Department of Planning and Zoning affirmatively determined that the proposed use will not create any of the aforesaid adverse impacts.

The Hearing Examiner finds that the proposed use, at the proposed location, would not result in any adverse impact to adjoining properties, or have any greater impact on adjacent properties, at the subject location than it would have elsewhere within the RO District.

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The Hearing Examiner recommends approval of the Application, with the following conditions:

1. The Applicants shall obtain all necessary State and county permits for the use of the existing mad proposed buildings.
2. The Applicants shall complete all landscaping as shown on Attachment 12 to the Department of Planning and Zoning Staff Report filed in connection with the subject Application once the construction of the second building is complete.

Date: November 28, 2005

REBECCA A. BRYANT
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on DECEMBER 27, 2005.